

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHNNIE JACKSON,)	
)	
Plaintiff,)	
)	
v.)	No. 4:05 CV 50 DDN
)	
WILLIAM MUDD, KEVIN HAMMOND,)	
and PAUL BILLINGS,)	
)	
Defendants.)	

ORDER DISMISSING ACTION WITH PREJUDICE

This action is before the court upon the oral motion of the defendants for the sanction of dismissal of the action without prejudice. (Doc. 81).

Plaintiff Johnnie Jackson commenced this action with retained counsel. The action progressed in the usual course and was set for a jury trial on January 14, 2008. On the date set for the final pretrial conference, January 4, 2008, plaintiff's counsel made an oral motion for leave to withdraw from representing plaintiff due to the nature of communications between them shortly before which indicated that their relationship had been broken. (Doc. 75).

Rather than decide that motion at that time, the court issued a written order to plaintiff to personally appear on January 9 at 2:00 p.m. to comment on the status of the case and his representation by counsel; the court ordered that the order be sent directly to plaintiff. (Doc. 77). It was the court's hope that the case might still be tried during the week of January 14. After receipt of the court's order, plaintiff telephoned court staff asking for an opportunity to speak personally with the undersigned by telephone; plaintiff was advised by court staff that such communication was not appropriate, but that he should appear as ordered on the record in the courtroom. Plaintiff did not appear on January 9 as ordered. The motion of plaintiff's counsel for leave to withdraw from representing plaintiff was sustained on January 9, 2008. (Doc. 78).

When plaintiff did not appear on January 9, 2008, the court issued a written order for him to file, not later than January 16, a written statement explaining why he did not appear on January 9. The order also

gave plaintiff notice that his failure to comply with the order would result in the dismissal of the action with prejudice. Doc. 78.

On January 16, plaintiff telephoned court staff indicating he wished to explain to the court personally on the telephone why he did not appear on January 9. He was advised to appear in the courtroom at 3:00 p.m. on January 16 to give that explanation on the record. He did not appear in the courtroom on January 9 and he did not file any written statement on January 16 explaining why he did not appear on January 9, 2008, as ordered.

The order of January 9, 2008 stated that plaintiff's failure to comply with the order would result in the dismissal of this action with prejudice. Plaintiff did not comply with that order. He did not appear in person on January 9 or 16 as directed. Up to the issuance of this order, plaintiff has not filed any written document to explain the status of the action.

Therefore, for his failure to appear in court as directed by this court's order of January 4, 2008, and for his failure to respond to this court's show cause order of January 9, 2008,

IT IS HEREBY ORDERED, pursuant to Federal Rule of Civil Procedure 41(b), that the motion of defendants to dismiss this action with prejudice (Doc. 81) is sustained. The action is dismissed with prejudice.

/S/ David D. Noce
UNITED STATES MAGISTRATE JUDGE

Signed on January 18, 2008.